

WC 09-200

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Application of  
  
Midvale Telephone Exchange, Incorporated,  
  
Transferor,  
  
and  
  
Oregon Telephone Corporation,  
  
Transferee,  
  
For Consent for Transfer of Control

WC Docket No. \_\_\_\_\_

**APPLICATION FOR CONSENT FOR TRANSFER OF CONTROL**

Pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and Section 63.03 or 63.04 of the Commission's rules, 47 C.F.R. § 63.03 and § 63.04, Midvale Telephone Exchange, Incorporated ("Midvale") (the "Transferor") and Oregon Telephone Corporation ("OTC") (the "Transferee"), with Midvale and OTC together constituting the "Applicants," hereby file this Application. Midvale and OTC hereby apply for Commission consent to transfer control of that certain service area known as the Juntura and Harper exchanges in Oregon which constitute USAC Study Area 532226.

The proposed transaction contemplates acquisition of the customer base and outside plant used to provide service in the Juntura and Harper exchanges in Oregon. Midvale currently serves fewer than two percent (2%) of the nation's access lines. With

the acquisition, OTC will also serve fewer than two percent (2%) of the nation's access lines. After the transaction, Midvale will provide telecommunications service in exchanges in Idaho and Arizona that are not adjacent to OTC's service area. OTC provides local exchange and exchange access service within the OTC service area located in northeast Oregon. Service to customers in the Juntura and Harper exchanges will be provided at substantially the same rates, terms and conditions as are in effect today. Therefore, the proposed transaction will be largely transparent to existing customers. For these reasons, and for the reasons detailed below, the transaction will serve the public interest and the Commission should grant this Application on a streamlined basis.

In accordance with the requirements of Section 63.04 of the Commission's rules, the Applicants provide the following information:

- (1) Name, address, and telephone number of each applicant.

Transferor:

Midvale Telephone Exchange, Incorporated  
PO Box 10  
Midvale, ID 83645  
(208) 355-2211

Transferee:

Oregon Telephone Corporation  
One Telephone Drive  
PO Box 609  
Mt. Vernon, OR 97865  
(541) 932-4411

- (2) State under the laws of which each applicant is organized.

Midvale is a corporation organized under the laws of the State of Idaho.

OTC is a corporation organized under the laws of the State of Oregon.

- (3) Legal counsel to whom correspondence concerning the application is to be addressed.

For Transferor:

Richard A. Finnigan  
2112 Black Lake Blvd SW  
Olympia, WA 98512  
(360) 956-7001

For Transferee:

Richard A. Finnigan  
2112 Black Lake Blvd SW  
Olympia, WA 98512  
(360) 956-7001

- (4) Name, address, citizenship, and principal business of entities that own at least ten percent (10%) of the equity of the applicants (to the nearest one percent (1%)).

For Transferor:

Mr. Lane Williams owns fifty percent (50%) of the equity of Midvale. Mr.

Williams is involved in the management of Midvale at the address set forth above for

Midvale. Mr. Williams is a citizen of the United States of America.

The remaining fifty percent (50%) equity is held by the Estate of Shirley Archer.

The beneficiaries of the estate are all United States citizens.

No other person or entity owns a ten percent (10%) or more direct or indirect interest in Midvale.<sup>1</sup>

For Transferee:

Mr. Leonard May owns forty-nine and 99/100 percent (49.99%) of the equity of

OTC. Mr. May's address is 2780 E. Fork Road, Rockland, ID 83271. Mr. Garrin Bott

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<sup>1</sup> The Commission should be aware that on September 16, 2009, Lane R. Williams and the Estate of Shirley Archer along with the Midvale Telephone Exchange, Inc. Employee Stock Ownership Trust (Midvale ESOP) filed a transfer of control application in WC Docket No. 09-169 which was released September 24, 2009 (Midvale ESOP 214). The Applicants under this Application and the applicants under Midvale ESOP 214 application expect that the closing of the transaction set forth in this Application will be completed prior to the time that the Midvale ESOP is funded.

owns forty-nine and 99/100 percent (49.99%) of the equity of OTC. Mr. Bott's address is 340 E. Center, Rockland, ID 83271. No other person or entity owns a ten percent (10%) or more direct or indirect interest in OTC.

- (5) Certification pursuant to Sections 1.2001 through 1.2003 that no party to the application is subject to a denial of Federal benefits.

By their signatures below, the Applicants certify that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

- (6) Description of the transaction.

On September 25, 2009, OTC and Midvale entered into a Purchase and Sale Agreement under which OTC would acquire the entire customer base and all outside plant and other assets in the Juntura and Harper exchanges. There are currently 246 working loops in these two exchanges. All of these customers are in Oregon.

- (7) Description of the geographic areas in which the Transferor and Transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area.

Midvale provides local exchange, exchange access, broadband Internet access and other advanced services in Cascabel, Granite Mountain, Millsite and Silver Bell wire centers located in Arizona and the Midvale, Lakeview, Stanley and Warm Lake wire centers located in Idaho. Midvale is a rural incumbent local exchange carrier. Midvale serves approximately 1,075 working loops as of July 31, 2009.

OTC provides local exchange, exchange access, broadband Internet access and other advanced services in the Bates, Dayville, Hereford-Unity, Mt. Vernon and Prairie City wire centers located in the northeast portion of the State of Oregon as a rural incumbent local exchange carrier. OTC serves 1,735 working loops as of July 31, 2009.

- (8) Statement on how the application fits into one or more of the presumptive streamlined categories or why it is otherwise appropriate for streamlined treatment.

This Application is eligible for presumptive streamlined treatment under Section 63.03(b)(2)(iii) of the Commission's rules, or in the alternative, is otherwise appropriate for streamlined treatment.

Under Section 63.03(b)(2)(iii), the Commission's streamlined procedures are presumed to apply where "a proposed transaction would result in a transferee having a market share in the interstate, intraexchange market of less than 10 percent, and the transferee would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction" and "the applicants are incumbent independent local exchange carriers ... that have, in combination, fewer than two (2) percent of the nation's subscriber lines installed in the aggregate nationwide, and no overlapping or adjacent service areas."<sup>2</sup> Midvale is an incumbent local exchange carrier which serves fewer than two percent (2%) of the nation's subscriber lines. Upon completion of this transaction, OTC is and will continue to be an incumbent local exchange carrier serving fewer than two percent (2%) of the nation's subscriber lines. Further, in combination, Midvale and OTC, both before and after completion of this transaction, have fewer than two percent (2%) of the nation's subscriber lines installed in the aggregate nationwide. In addition, since there are no overlapping service areas and no adjacent service territories, the proposed transaction accordingly falls within the presumptively streamlined category. Finally, OTC, as the Transferee, will, after the completion of the transaction, have a market share in the interstate, interexchange market of less than ten percent (10%). OTC does not provide competitive telephone exchange service or exchange access service and thus, OTC, as Transferee, can state that it would provide competitive telephone exchange service or exchange access service (if at all)

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<sup>2</sup> 47 C.F.R. § 63.03(b)(2)(iii).

exclusively in the geographic areas served by a dominant local exchange carrier that is not a party to the transaction.

Alternatively, streamlined treatment is appropriate under the Commission's "case-by-case approach."<sup>3</sup> Indeed, the Commission has adopted a "general rule in which all applications are eligible for streamlined processing," finding that such general eligibility for streamlined processing "best reduces regulatory burdens on domestic telecommunications carriers, while at the same time ensuring that we continue to serve the public interest under section 214 of the Communications Act."<sup>4</sup>

This Application should be subject to streamlined processing because it involves only a transfer of assets, and presents no "novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines."<sup>5</sup> As noted above (and discussed more fully below), this Application presents no competitive or public interest concerns. Upon completion of the proposed transactions, OTC will continue to provide service at substantially the same rates, terms and conditions as are in effect today. No customer will lose service or be adversely affected as a result of the proposed transaction. Because this transaction poses no competitive concerns and raises no novel issues, this Application is appropriate for streamlined treatment.

- (9) Identification of all other Commission applications related to the same transaction.

Following approval of this Application, Midvale will file a Section 63.71 application to discontinue service in the State of Oregon.

- (10) Statement whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure.

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<sup>3</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517 ¶34 (2002) ("*Streamlining Order*"); see also 47 C.F.R. § 63.03(a) (permitting streamlining "[u]pon determination ... that the application is appropriate for streamlined treatment").

<sup>4</sup> *Streamlining Order* ¶34.

<sup>5</sup> *Id.* ¶28.

The Applicants are not requesting special consideration of the Application.

- (11) Identification of any separately filed waiver requests being sought in conjunction with the transaction.

None at this time. The Applicants intend to file a Joint Petition for Expedited Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules.

- (12) A statement showing how grant of the application will serve the public interest, convenience, and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

OTC serves the Bates, Dayville, Hereford-Unity, Mt. Vernon and Prairie City exchanges in Oregon. Midvale is headquartered in the State of Idaho and has determined to consolidate its operations to the States of Idaho and Arizona. OTC's Oregon exchanges are located in relatively close proximity to the Juntura and Harper exchanges and can be managed efficiently from OTC's current operations. The acquisition of the Juntura and Harper exchanges will allow OTC to gain efficiencies in management of the Oregon properties it operates.

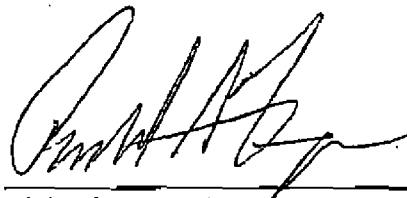
In contrast to the substantial potential benefits, the proposed transaction poses no countervailing harms. Upon consummation of the proposed transaction, OTC will provide service at substantially the same rates, terms and conditions as are in effect today. There will be no reduction, impairment, or discontinuance of service to any customer as a result of the proposed transaction. The cut-over of service will be seamless with no interruption or disruption of service. After cut-over, the customers will have access to broadband services they do not have access to today. The proposed transaction will be largely transparent to the current customers.

For all of the foregoing reasons, the proposed transaction will serve the public interest and this Application should be granted on a streamlined basis.

Payment in the amount of \$1,015.00, along with FCC Form 159, was transmitted to the Federal Communications Commission, c/o U.S. Bank - Government Lockbox #979091, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101 (Attn: FCC Government Lockbox) for delivery this date.

An original and six copies of this Application are enclosed for filing. To acknowledge receipt, please stamp and return one copy of this Application enclosed for that purpose. Please contact the undersigned with any inquiries concerning this Application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard A. Finnigan', written over a horizontal line.

Richard A. Finnigan  
Attorney for Midvale Telephone Exchange,  
Incorporated and Oregon Telephone  
Corporation

Dated: October 19, 2009

[Please see attached certifications of Midvale and OTC which are incorporated herein by this reference.]

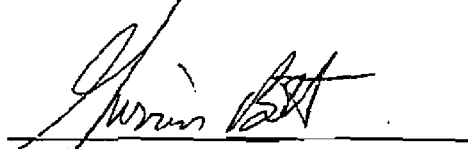


## DECLARATION OF GARRIN BOTT

I, Garrin Bott, President for Oregon Telephone Corporation, do hereby declare under penalty of perjury that I have read the foregoing "APPLICATION FOR CONSENT FOR TRANSFER OF CONTROL," and the information contained therein is true and accurate to the best of my knowledge, information, and belief.

10/5/09

Date

  
Garrin Bott

## DECLARATION OF STEVE CHILD

I, Steve Child, Chief Executive Officer for Midvale Telephone Exchange, Incorporated, do hereby declare under penalty of perjury that I have read the foregoing "APPLICATION FOR CONSENT FOR TRANSFER OF CONTROL," and the information contained therein is true and accurate to the best of my knowledge, information, and belief.

10-6-2009

Date



Steve Child